IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

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SUPREME COURT, U.S.

80-1099

STATE OF ALABAMA

Petitioner

vs.

BILLY BATTLES

Respondent

ARGUMENT AGAINST PETITION FOR WRIT OF CERTIORARI

BILLY BATTLES
Respondent
Rt. 11, Box 338-A
Gadsden, Alabama 35903

ISSUE

DID FLORIDA COMPLY WITH ALABAMA EXTRADITION LAW WHEN THE EXTRADITION WAS BASED ON INFORMATION WITH NO AFFIDAVIT ATTACHED?

ARGUMENT

Florida failed to comply with the Alabama Extradition Law which states that no person can be extradicted unless the demand for extradition is . . . "accompanied by a copy of an indictment found, or by an information supported by affidavit, in the State having jurisdiction of the crime. . ." 15-9-13, Code of Alabama, 1975 provides that the supporting papers must show that accused ". . . is lawfully charged by indictment or by an information filed by a prosecuting officer and supported by affidavit to the facts. . ."

The Alabama Court of Criminal Appeals found the facts to be as follows:

> " The two-count information by the state's attorney of the Fourteenth Judicial Circuit of Florida is dated and certified by the Clerk of the Bay County, Florida, Court, under date of August 20, 1979. There is no affidavit or warrant attached to this information.
>
> There is an "application for requisition" directed to the Governor of Florida by the state's attorney of Bay County, dated, sworn to, and certified to under date of August 30, 1979, seeking the extradition of Billy Battles and asserting that there is an information which was attached, but the record does not show that there was an affidavit attached to the information.. ."

As a substitute for the required affidavit, Florida offered a concolusionary affidavit (opinion page 5) filed eleven days after the issuance of the information and eight days after the issurance of the arrest warrent.

Such affidavit is defective for several reasons:

1. The person signing the affidavit has no personal knowledge of the facts alleged.
2. The affiant does not disclose the source of information.
3. The affiant produces no evidence of reliability of the source.
4. The affidavit presents conclusions and no facts.

The Alabama Court of Criminal Appeals rules as a matter of law and fact that the affidavit was insufficient:

> " This Court is of the opinion that this affidavit is not sufficient in law to support the information which is dated some eleven days earlier and is not attached to such information, but, rather, is attached to an "application for requisition", dated August 30, 1979, and directed to the Governor of Florida.
>
> Moreover, the affidavit in question is made by the investigator for the State's attorney's office, and there is no showing of any personal knowledge on his part of the source, or reliability of the facts asserted in the affidavit. Nowhere in the record is there an affidavit of one Larry L. Stimmett to whom it is alleged the appellant gave a worthless check.
>
> In this state of the record, we cannot in good conscience conclude that the State of Florida has satisfied the requirements of our statute. . ."
> (Opinion page 6)

Alabama and Florida seek to elevate the issue as to whether an accused in an asylum state has a Constitutional right to a probable cause hearing before extradition. Billy Battles has never asserted such a right. Mr. Battles asks only that Florida comply with Alabama Extradition Law. The law requires that if extradition is based on an information, such information must be based on sworn affidavit. No such affidavit has been presented. If extradition had been sought on an indictment, there is no requirement of an affidavit.

This case presents no novel questions and no Constitutional questions. The Alabama Court of Criminal Appeals was not required to interpret Florida Law. Instead, Florida is required to comply with Alabama Law. The only issue is whether Florida complied with the Alabama Extradition Law. The answer is clearly "NO".

Respectfully Submitted,

B. Billy Battles

BILLY BATTLES

Prepared by:

Myron K. Allenstein

MYRON K. ALLENSTEIN
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CERTIFICATE OF SERVICE

This is to certify that I have this date mailed a copy of the foregoing to the Honorable Charles A. Graddick, 250 Administrative Bldg., 64 No. Union Street, Montgomery, Alabama 36130.

This the 20 day of March, 1981.

Billy Battles

BILLY BATTLES

IN THE SUPREME COURT
OF THE UNITED STATES

STATE OF ALABAMA	*	APPLICATION TO APPEAL IN
Petitioner	*	FORMA PAUPERIS
vs.	*	
BILLY BATTLES	*	
Respondent	*	Case No. _____

I, Billy Battles, being first duly sworn, deposes and says that I am Respondent in the above entitled cause; that in support of my Motion to proceed without being required to prepay fees, costs or giving security therefor, I state that because of my poverty, I am unable to pay the cost of said proceeding or to give security therefor; that I believe I am entitled to redress:

I further swear that the response which I have made to the questions and instructions below relating to my ability to pay the cost of this cause are true and correct.

1. Are you presently employed? no

2. If the answer to above is "yes", state the place of your employment and the amount of salary and wages per month which you receive. n/a

3. Have you received within the past (12) months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or any other source? no, except social security $329.70/mo

4. Do you own any cash or checking or saving account? no

5. Do you won any real estate, stocks, bonds, notes, automobiles, or other valuable property? (excluding ordinary household furnishings and clothing) no

6. List the persons who are dependent upon you for support and state their age and relationship? I have one child who I do not personally support

I, Billy Battles understand that a false statement or answer to any question in this affidavit will subject me to penalities for perjury.

Billy Battles
BILLY BATTLES

Sworn to and subscribed to
before me this the 19
day of March, 1981.

Myron K. Greenstein
NOTARY PUBLIC